

## **Assembly Bill No. 2641**

### **CHAPTER 863**

An act to amend Sections 5097.91 and 5097.98 of the Public Resources Code, relating to burial grounds.

[Approved by Governor September 30, 2006. Filed with  
Secretary of State September 30, 2006.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2641, Coto. Native American human remains and multiple human remains.

Existing law establishes the Native American Heritage Commission ("commission") and authorizes the commission to bring an action to prevent damage to Native American burial grounds or places of worship. Existing law, the California Native American Grave Protection and Repatriation Act of 2001, requires all state agencies and all museums that receive state funding to inventory Native American human remains and cultural items in their possession for return to the appropriate tribes.

Existing law requires the commission, once it receives notification of Native American human remains (human remains), from a county coroner, to notify the most likely descendants, and the descendants, with permission of the landowner, or his or her authorized representative, may inspect the site and recommend appropriate dignified disposition of human remains and grave goods, but are required to do so within 24 hours of notification by the commission.

Existing law requires that when the commission is unable to identify descendants, the descendants fail to make a recommendation, or other specified circumstances occur, the landowner shall reinter the human remains, as specified.

The bill would require that the identified descendants make recommendations or preferences for treatment, as described, within 48 hours of being granted access to the site, instead of within 24 hours of the notification by the commission. The bill would also require the landowner, upon discovery of human remains, to ensure that the immediate vicinity, as described, is not damaged or disturbed, until specific conditions are met, including discussing and conferring, as defined, with the descendants regarding their preferences for treatment.

The bill would authorize the parties mutually agreeing to extend the discussions, taking into account the possibility of multiple human remains being located in the project area, providing a basis for additional treatment measures.

The bill would require that when the commission is unable to identify descendants, the descendants fail to make a recommendation, or other

specified circumstances occur, and the landowner is required to reinter the human remains, as specified, the landowner is also required to protect the site where the remains are reinterred from further and future disturbance, as specified.

The bill would authorize the landowner, where multiple human remains are found during ground disturbing land development activity, to agree to additional conferral with the descendants, as specified; however, if the parties are unable to agree on appropriate treatment, the remains shall be reinterred, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) Private and public lands in California may contain the remains of ancestors to contemporary California Native Americans.

(b) Current state law provides a limited measure of protection for prehistoric and historic California Native American human remains and sites containing multiple human remains.

(c) California Native American human remains are not always located within the current boundaries of California Native American reservations and rancherias, and therefore, are not covered by resource protection laws of tribal governments.

(d) It is the intent of the Legislature, in enacting this bill, to accomplish the following:

(1) Encourage landowners to consider preservation or avoidance of California Native American human remains in place, whenever feasible.

(2) Encourage culturally sensitive treatment of California Native American human remains when preservation is not feasible.

(3) Encourage meaningful discussions, including the development of agreements to establish a protocol for the dignified and culturally sensitive treatment of Native American human remains, between the most likely descendants and landowners at the earliest possible time, so that California Native American human remains can be identified and considered during development activities.

(4) Ensure that landowners and most likely descendants meaningfully communicate when California Native American human remains may be disturbed.

SEC. 2. Section 5097.91 of the Public Resources Code is amended to read:

5097.91. There is in state government a Native American Heritage Commission, consisting of nine members appointed by the Governor with the advice and consent of the Senate. For purposes of this chapter, “commission” means the Native American Heritage Commission.

SEC. 3. Section 5097.98 of the Public Resources Code is amended to read:

5097.98. (a) Whenever the commission receives notification of a discovery of Native American human remains from a county coroner pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, it shall immediately notify those persons it believes to be most likely descended from the deceased Native American. The descendants may, with the permission of the owner of the land, or his or her authorized representative, inspect the site of the discovery of the Native American human remains and may recommend to the owner or the person responsible for the excavation work means for treatment or disposition, with appropriate dignity, of the human remains and any associated grave goods. The descendants shall complete their inspection and make recommendations or preferences for treatment within 48 hours of being granted access to the site.

(b) Upon the discovery of Native American remains, the landowner shall ensure that the immediate vicinity, according to generally accepted cultural or archaeological standards or practices, where the Native American human remains are located, is not damaged or disturbed by further development activity until the landowner has discussed and conferred, as prescribed in this section, with the most likely descendants regarding their recommendations, if applicable, taking into account the possibility of multiple human remains. The landowner shall discuss and confer with the descendants all reasonable options regarding the descendants' preferences for treatment.

(1) The descendants preferences for treatment may include the following:

(A) The nondestructive removal and analysis of human remains and items associated with Native American human remains.

(B) Preservation of Native American human remains and associated items in place.

(C) Relinquishment of Native American human remains and associated items to the descendants for treatment.

(D) Other culturally appropriate treatment.

(2) The parties may also mutually agree to extend discussions, taking into account the possibility that additional or multiple Native American human remains, as defined in this section, are located in the project area providing a basis for additional treatment measures.

(c) For the purposes of this section, "conferral" or "discuss and confer" means the meaningful and timely discussion and careful consideration of the views of each party, in a manner that is cognizant of all parties' cultural values, and where feasible, seeking agreement. Each party shall recognize the other's needs and concerns for confidentiality of information provided to the other.

(d) (1) Human remains of a Native American may be an inhumation or cremation, and in any state of decomposition or skeletal completeness.

(2) Any items associated with the human remains that are placed or buried with the Native American human remains are to be treated in the

same manner as the remains, but do not by themselves constitute human remains.

(e) Whenever the commission is unable to identify a descendent, or the descendants identified fail to make a recommendation, or the landowner or his or her authorized representative rejects the recommendation of the descendants and the mediation provided for in subdivision (k) of Section 5097.94, if invoked, fails to provide measures acceptable to the landowner, the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American human remains with appropriate dignity on the property in a location not subject to further and future subsurface disturbance. To protect these sites, the landowner shall do one or more of the following:

(1) Record the site with the commission or the appropriate Information Center.

(2) Utilize an open-space or conservation zoning designation or easement.

(3) Record a document with the county in which the property is located.

(f) Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may agree that additional conferral with the descendants is necessary to consider culturally appropriate treatment of multiple Native American human remains. Culturally appropriate treatment of such a discovery may be ascertained from a review of the site utilizing cultural and archaeological standards. Where the parties are unable to agree on the appropriate treatment measures the human remains and items associated and buried with Native American human remains shall be reinterred with appropriate dignity, pursuant to subdivision (e).

(g) Notwithstanding the provisions of Section 5097.9, this section, including those actions taken by the landowner or his or her authorized representative to implement this section and any action taken to implement an agreement developed pursuant to subdivision (l) of Section 5097.94, shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(h) Notwithstanding the provisions of Section 30244, this section, including those actions taken by the landowner or his or her authorized representative to implement this section, and any action taken to implement an agreement developed pursuant to subdivision (l) of Section 5097.94 shall be exempt from the requirements of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000)).